

**Taylor Machine Products, Inc. and Woodrow Fay Singleton, Paul Edward Marguess, James Howells and Local Lodge 82, District Lodge 60, International Association of Machinists and Aerospace, AFL-CIO-CLC.** Cases 7-CA-33135, 7-CA-33187, 7-CA-33483, 7-CA-33583, 7-CA-33809(1), and 7-CA-33809(2)

March 18, 2003

## SECOND SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN  
AND ACOSTA

On March 21, 2002, Administrative Law Judge George Carson II issued the attached second supplemental decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions, and to adopt the recommended Order.

### ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Taylor Machine Products, Inc., Detroit, Michigan, its officers, agents, successors and assigns, shall make whole the employees named below by paying them the amounts set forth opposite their names, plus interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and State laws.

James Howells	\$ 16,410.13
Vernadette Bader	63,787.06
Ruth Cecil	15,502.46
Josephine Mallia	10,740.51
Floria Russell	26,419.57
Rosemary Smith	14,119.57
Bonnie Warren	<u>41,294.73</u>
Total Backpay:	\$188,273.54

Robert A. Drzyzga, Esq., for the General Counsel.

David Porter and Paul Shemanski, for the Charging Party.

<sup>1</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

## SECOND SUPPLEMENTAL DECISION

### STATEMENT OF THE CASE

GEORGE CARSON II, Administrative Law Judge. I heard this case in Detroit, Michigan, on February 4 and 5, 2002, pursuant to a Supplemental Decision and Order of the Board dated August 27, 2001. *Taylor Machine Products*, 335 NLRB No. 56 (2001) (not reported in Board volumes). In the underlying unfair labor practice case the Board found, inter alia, that the Respondent, Taylor Machine Products, Inc., discriminatorily terminated six employees. *Taylor Machine Products*, 317 NLRB 1187 (1995). The Board's Order was enforced in pertinent part by the Court of Appeals for the Sixth Circuit on February 18, 1998. *NLRB v. Taylor Machine Products*, 136 F.3d 507 (6th Cir. 1998). On October 26, 1999, the Regional Director for Region 7 issued a compliance specification that set out the backpay due to the six discriminatees. The Respondent filed an answer. On January 28, 2000, counsel for the General Counsel filed a Motion for Partial Summary Judgment to which the Respondent filed a response. The Board, in *Taylor Machine Products*, supra, granted partial summary judgment upon the allegations relating to the calculation of the gross backpay of the six discriminatees and remanded for hearing the remaining issues. Those issues, which were addressed at this hearing, relate to interim earnings, medical expenses, and the job searches of the discriminatees.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

### FINDINGS OF FACT

#### I. PRELIMINARY MATTERS

The General Counsel, at the hearing, amended the compliance specification to set out an excepted period from October 1994 through May 1995 for discriminatee Vernadette Bader, an excepted period from August 7, 1992, until May 1, 1993, for discriminatee Josephine Mallia, and an excepted period for the month of June 1997 for discriminatee Bonnie Warren. Pursuant to this amendment, the General Counsel submitted revised calculations of the backpay due to these discriminatees. (GC Exhibit 1(gg)). The General Counsel further amended the compliance specification by deleting any claim for medical expenses on behalf of discriminatee Rosemary Smith.

The Respondent, at the hearing, stipulated to the medical expenses of Bader and Mallia and discriminatees Ruth Cecil and Floria Russell. Expenses of \$25 incurred by discriminatee James Howells in the third quarter of 1992 are admitted in the Respondent's answer.

The Respondent presented Robert Ancell, Ph.D., a rehabilitation consultant, as an expert witness regarding the availability of work. Ancell's expertise is in rehabilitating and placing workers who have lost their employment because of some physical disability or injury. Placement of these workers requires knowing the job market and positions for which the employee is qualified. Ancell testified that he would assist employees in preparing for job interviews. He acknowledged that citing a termination on an application would "raise a red flag"

with a prospective employer, noting that he advised employees to write "will discuss" when such information was sought. The Respondent, through Ancell, introduced various documents reflecting statistics relating to unemployment. Ancell admitted that unemployment of women is generally higher than that of men. He also acknowledged that an older employee would have greater difficulty finding a job than a younger employee. The Respondent did not provide Ancell's expert assistance regarding job interviews and completing applications to the discriminatees at the time of their terminations. His involvement in this matter was related only to his appearance at this hearing. Although Ancell testified that he reviewed the discriminatees personnel files, he had met none of them and was unaware of the specific jobs that any of them had performed. Upon being advised of the jobs they had performed, he described their work as unskilled or low semi-skilled.

Ancell testified regarding unemployment statistics for Wayne County, Michigan, as derived from data relating to Detroit and its surrounding communities of which Taylor, Michigan, is one. That data reports the annual average unemployment rates for Wayne County and Taylor, Michigan. Those rates reflect a steadily declining unemployment rate, from 10.5 percent in 1992 to 4.7 percent in 1997 in Wayne County and from 7.5 percent in 1992 to 3.3 percent in 1997 in Taylor. In 1993, the Wayne County rate was 8.3 percent and the Taylor rate was 5.9 percent. A rate of 5.9 percent reflects that one out of every 17 (16,949) persons in the statistical labor force was unemployed and receiving unemployment compensation. These figures, based upon individuals receiving unemployment compensation, do not reflect unemployed individuals who had exhausted their entitlement to unemployment benefits. Like the expert testimony in *Delta Data Systems Corp.*, 293 NLRB 736, 740 at fn. 6 (1989), Ancell's generalized statistical evidence "did not account for a number of potentially significant variables" such as the gender of five of the discriminatees, their ages, or their job skills. Ancell acknowledged that the statistical data he presented reflected unemployment rates, not jobs, and that he could not tell "which employers were open at any given time." There is no evidence that any discriminatee herein refused any job offer. Neither Ancell's testimony nor the statistical data establishes that any discriminatee would have been hired if he or she had applied at any specific company.

It is well settled that the reasonableness of a discriminatee's efforts to find a job and thereby mitigate loss of income resulting from an unlawful discharge need not comport with the highest standard of diligence, i.e., he or she need not exhaust all possible job leads. Rather, it is sufficient that the discriminatee make a good-faith effort. In determining the reasonableness of this effort, the discriminatee's skills, experience, qualifications, age, and labor conditions in the area are factors to be considered. The existence of job opportunities by no means compels an inference that the discriminatees would have been hired if they had applied. The respondent's obligation to satisfy its affirmative defense is to show a "clearly unjustifiable refusal to take desirable new employment." Uncertainty in such evidence is resolved against the respondent as the wrongdoer. *Lundy Packing Co.*, 286 NLRB 144, 146

(1987); *enfd.* 856 F.2d 627 (4th Cir. 1988) [footnotes omitted].

All of the discriminatees, except Mallia, applied for and received unemployment compensation from the State of Michigan. The testimony of the witnesses establishes that the State of Michigan required that recipients of unemployment compensation seek work during each preceding 2-week period for which the compensation checks were issued. All testified that they had done so, and there is no evidence to the contrary. The Respondent argues that several of the discriminatees should be denied backpay because they could not recall specifically when and where they sought employment when receiving unemployment benefits. This argument misallocates the burden of proof. The receipt of unemployment compensation pursuant to the rules regarding eligibility constitutes "prima facie evidence of a reasonable search for interim employment." *Birch Run Welding*, 286 NLRB 1316, 1319 (1987). The Respondent did not rebut the prima facie evidence of reasonable job searches established by the documentary evidence reflecting the receipt of unemployment benefits by all discriminatees except Mallia.

## II. BACKPAY

### A. James Howells

Howells' backpay period is from June 12, 1992, until August 29, 1994, when he was offered reinstatement. Although Howells kept no separate list of employers at which he sought work, he received unemployment compensation and testified that, in order to receive the compensation, he was required to list at least three places at which he had sought work during each preceding 2-week period. He did so and turned in those lists. He obtained employment at Mercury Manufacturing approximately 3 months after his termination and was thereafter employed continuously. Howells had previously worked at Mercury and had been laid off. He continued to seek work after obtaining this employment and left Mercury for Ameritech in June 1993. Although the starting pay at Ameritech was lower than his wage at Mercury, Howells testified that the benefits were superior, that he felt like he "had more of a chance for advancement," and that there were rumors of impending layoffs at Mercury and he did not "want to go through that again." The Respondent, in its brief, argues that Howells is entitled to backpay only for the period in which he was receiving unemployment compensation since his starting wage at Mercury was the same as at Taylor Machine. The Respondent fails to note that Howells, at Taylor Machine, regularly received overtime. This overtime is reflected in the calculation of his gross backpay as set out in the compliance specification. Although the Respondent argues that Howells' leaving Mercury for a lower wage at Ameritech was unjustified, his admitted interim earnings of \$8295.76, an average of \$276.53 per week over 7 months employment, June through December 1994 at Ameritech, exceeded his average weekly earnings of \$211.94 a week for the period January through May at Mercury. (Total earnings of \$4662.70 divided by 22 weeks = \$211.94). In July 1994, Howells left Ameritech to accept employment with the State of Michigan, employment for which he had initially applied in 1989 but which was foreclosed by a hiring freeze. Having ob-

tained this employment, he refused the Respondent's August 29, 1994, offer of reinstatement, thus terminating his backpay period. I find that Howells is entitled to backpay in the amount of \$16,410.13 as alleged in the compliance specification. Howells had no medical expenses.

#### B. Vernadette Bader

Bader's backpay period is from August 6, 1992, until December 31, 1997, when the compliance specification acknowledges that she removed herself from the labor market. Bader received unemployment compensation through May 21, 1993. From October 1994 through May 1995, an excepted period, Bader attended a vocational school and, upon completion of that training, received a Michigan license as a manicurist. Bader had, before her termination, sold perfume and jewelry to augment her earnings from Taylor Machine. She continued this endeavor after her termination, but her income tax returns reflect that her deductible expenses exceeded her revenue in 1992 and 1993. Bader testified that she sought work throughout her backpay period and that she made contemporaneous notes of establishments at which she sought work. Although undated, the total number of contacts reflected on her notes exceeds 50. The Respondent, in its brief, argues that Bader's scribbled notes constitute "a shameful attempt to manufacture evidence." I reject that characterization. The only evidence that the Respondent adduced relating to her job search was her testimony. The only basis for the Respondent's argument that Bader's search was not reasonable is that it was not successful. I shall not speculate as to whether Bader's age detracted from her desirability as an employee, but I do note that Bader was born on February 26, 1932, and was 60 years old when she was terminated and her backpay period began. Although several of the discriminatees were offered reinstatement in 1994, Bader was not.

Bader became eligible for social security benefits as a widow when she became 60 and, after consultation with a representative of the Social Security Administration, began drawing benefits. The receipt of such benefits has no bearing upon the Respondent's backpay liability so long as the discriminatee continued to seek work or engage in self-employment, as Bader did. *F & W Oldsmobile*, 272 NLRB 1150 (1984).

Bona fide self-employment does not toll backpay. *Cassiss Management Corp.*, 336 NLRB 961, 969 (2001). When a discriminatee asserts engagement in self-employment without continuing efforts to obtain employment, the circumstances of that self-employment must be evaluated. *United Supermarkets*, 287 NLRB 394, 402-403 (1987). The Respondent, in its brief, asserts that Bader was willfully idle. The record establishes otherwise, and I reject the Respondent's assertion. From August 1992 until October 1994, Bader looked for work and continued to sell perfume and jewelry, as reflected in her income tax returns. In October 1994, this 62 year old woman, having been unsuccessful in finding work and having not been offered reinstatement, credibly testified that she sought and received training and became a licensed manicurist. The time of her training, from October 1994 until May 1995 is an excepted period. Upon becoming a licensed manicurist, Bader sought employment at Diane's Hair Den where the proprietor "was

thinking of starting" a nail business. The proprietor ultimately decided not to start a nail business. Bader also sought employment with Arleen Hair Fashions, testifying that Arleen Leeds "wanted to start a nail business," but she did not "have the clientele for it." When neither of the foregoing efforts succeeded, Bader began "doing nails out of my [her] home." Income from this self-employment is reflected on her income tax returns in 1995 and thereafter. Furthermore, the Respondent did not establish that Bader ceased seeking other employment after she became a manicurist.

Bader's backpay has been adjusted due to the excepted period in which she sought and received training as a manicurist. Although Counsel for the General Counsel amended the specification to set out an excepted period of October 1994 through May 1995, the revised calculations for Bader credit her with 2 weeks of backpay in the third quarter of 1994. This is inconsistent with the amendment of the General Counsel. I shall therefore deduct 2 weeks of backpay, a total of \$444.25, from the \$63,163.91 alleged in the revised specification. As revised, Bader is entitled to \$62,719.66 in backpay. Bader's medical expenses total \$1,067.40.

#### C. Ruth Cecil

Cecil's backpay period is from August 5, 1992, until December 31, 1993, when she voluntarily removed herself from the labor market. Cecil, who was 68 years old in 1992, testified to seeking work at various employers while drawing unemployment compensation. Unemployment records reflect Cecil's receipt of unemployment benefits only in 1993; however, a copy of her income tax return for 1992 reporting \$2224 in unemployment compensation confirms her receipt of benefits during the months immediately after her termination in 1992. Having unsuccessfully sought work throughout the period in which she was receiving unemployment compensation, Cecil acknowledged ceasing to look for work "[s]hortly after I quit drawing unemployment," noting that she went to "a couple of places" but that she was 70 years old and "they don't say it is because of your age, they just don't take you." Cecil's final unemployment check was processed on November 22, 1993. Although the Respondent admitted the backpay period as alleged, it argues that she should receive no backpay since she did not specifically recall by name more than three places at which she looked for work while drawing unemployment compensation almost 10 years ago. The Respondent has not rebutted the prima facie evidence of a reasonable search for interim employment established by Cecil's receipt of unemployment benefits. *Birch Run Welding*, supra. I credit her testimony, and I find that Cecil went to a "couple of places," shortly after November 22, 1993. There is no evidence that she sought work after November 1993. In the absence of any evidence that Cecil sought work after November, I shall toll her backpay for the month of December 1993. Cecil's gross backpay for the 4th quarter of 1993 was based upon average weekly earnings of \$227. I shall, therefore, deduct \$908 (\$227 x 4) from her backpay for the 4th quarter of 1993. Her backpay total, as adjusted is \$14,293.58 (\$15,201.58-\$908). Cecil's medical expenses total \$1,208.88.

#### D. Josephine Mallia

Mallia's backpay period is from May 1, 1993, until August 22, 1994, when she was offered reinstatement. Shortly after being terminated, Mallia underwent major surgery and an extended period of recuperation. The compliance specification begins her backpay period in May, and she credibly testified to beginning to look for work at about that time. Mallia recalls working at a plant, the name of which she could not remember, for a short period of time. She was laid off from this job. It appears that she obtained this work through Grayrose Contract Staffing Services. She then obtained work at Raal Corporation on May 17, 1993. She worked there until being laid off on August 10, 1993. She began seeking employment immediately and, on October 7, 1993, obtained employment at Mercury Manufacturing. Although the revised compliance specification relating to Mallia, GC Exhibit 1(gg), includes her earnings from Grayrose in the 4th quarter of 1993, these interim earnings, consistent with her testimony, should have been included in the second quarter. Mallia worked for Raal for a total of 12 weeks, 6 weeks in the second quarter (May 17 to June 30) and 6 weeks in the third quarter (July 1 to August 10) of 1993. Thus, her total earnings of \$1911.25 should be equally divided between those quarters. Although the foregoing revisions have no effect upon the Respondent's total liability, the revisions will affect the calculations of interest upon the backpay due to Mallia.<sup>2</sup> The Respondent, in its brief, does not dispute that Mallia is entitled to \$3,950.71 in backpay as alleged in the revised specification, and I so find. Mallia's medical expenses total \$6,789.80.

#### E. Floria Russell

Russell's backpay period is from August 6, 1992, until September 4, 1994, when she was offered reinstatement. Russell obtained work at Meijer, a department store, in June 1994. Thereafter, she accepted reinstatement but, according to her testimony, was laid off shortly thereafter. There is no allegation of an unfair labor practice relating that separation. Russell credibly testified to her receipt of unemployment benefits, regularly seeking employment while drawing those benefits, and continuing to seek employment when those benefits were exhausted. Her search was ultimately successful when she obtained employment at Meijer. When asked where she went before finding work at Meijer, Russell testified that she went "to a lot of stores," naming Buy-Rite, formerly D & D, and O'Briens, noting that she went to a "lot of places" but that she did not "remember all of them." I credit her testimony and find

<sup>2</sup> For the second quarter of 1993, Mallia's interim earnings were \$261.25 and \$955.52, a total of \$1,216.87. Her gross backpay was \$2,273.04, leaving a net backpay liability of \$1056.27 for the second quarter of 1993. Although the revised specification reports interim earnings of \$1274.16 for Mallia in the third quarter of 1993, the figure should be \$955.52. Mallia's gross backpay for the third quarter of 1993 is \$3336.08. Subtracting her correct interim earnings of \$955.52 from this figure leaves a net backpay liability of \$2380.55 for the third quarter. In the fourth quarter of 1993, Mallia had earnings only from Mercury Manufacturing in the total amount of \$2855. The \$261.25 from Grayrose was earned in the second quarter. Thus the Respondent's net backpay liability for the fourth quarter of 1993 is \$514.08.

that Russell is entitled to backpay in the amount of \$26,272.57 as alleged in the compliance specification. Russell had medical expenses of \$147.

#### F. Rosemary Smith

Smith's backpay period is from August 6, 1992, until December 31, 1993, when the specification states that she voluntarily removed herself from the labor market. Smith's testimony reflects a recollection faded by time. Although the Respondent asserts that Smith contacted no employer directly, this assertion is contradicted by Smith's recounting directly contacting Horizon and Sterling Stamping, where she spoke with "Rick, the owner." Smith credibly testified that, when receiving unemployment compensation, she sought work. Her recitation of instances in which she asked friends to make inquiries on her behalf augments that testimony. As stated in *Teamsters Local 164*, 274 NLRB 909, 912 (1985), "her recitation of inquiries to friends and acquaintances regarding availability of employment with particular establishments . . . tend[s] to show a continuing effort to find work." Smith, having failed to find employment when actively seeking employment while drawing unemployment compensation, acknowledged that, when she had exhausted her unemployment benefits, she ceased looking for work. She received her last unemployment compensation check on November 6, 1993. Although the Respondent admitted the backpay period as alleged, Smith's admission establishes that she did not seek work from November 6 until December 31, 1993, a period of 8 weeks, and I shall toll her backpay for that period. Smith's gross backpay for the fourth quarter of 1993 was based upon average weekly earnings of \$239.30. I shall, therefore, deduct \$1914.40 (\$239.30 x 8) from her backpay for the 4th quarter of 1993. Smith had no medical expenses. Her backpay total, as adjusted, is \$14,119.08 (\$16,033.48 - \$1914.40).

#### G. Bonnie Warren

Warren's backpay period is from August 6, 1992, until August 17, 1998, when she was offered reinstatement. Warren received unemployment compensation through June 1993. She began working at Mercury Manufacturing in September 1996. Thereafter, in June 1997, she voluntarily quit this employment in order to care for her daughter who had undergone surgery. She began working again in November 1997. The compliance specification, as amended, sets out June 1997 as an excepted period. The Respondent argues that Warren's job search was inadequate noting various discrepancies in her testimony and the absence of any record of where she sought work after May 1995. In April 1993, Warren began keeping notes identifying some of the employers at which she sought work. Although she testified that she began doing this after her unemployment benefits ceased, this testimony was mistaken since documentary evidence reveals that Warren received benefits through the month of June. Warren's recollection was, as might be expected, hazy regarding events that occurred almost 10 years ago. She recalled several employers that she contacted when she was receiving unemployment compensation after her recollection was refreshed using forms that she had submitted when she was receiving unemployment benefits. Her notes are in-

complete. There are no entries for June 1993, when she was still receiving unemployment compensation, or for August 1993, when she testified that she did continue to seek employment, although she did not remember where. There are no entries in her notes between September 1993 and October 1994; however, counsel for the Respondent did not examine Warren regarding her job search during that period. Her notes reflect contact with five employers in October 1994. Thereafter, her notes reflect contact with Meijer, a department store, in November 1994, but no entries for the months of December 1994 and January and February 1995. When asked about the absence of entries for those months, Warren testified, "I probably went back to some of the places I'd already been to." When asked why she did not write down those contacts, she testified, "Because they still wasn't hiring, I guess." Despite this response, her notes reflect unsuccessful contacts with Total Distribution Systems and McDonalds in March of 1995 and Master Automatic and Applewood Nursing Home in May 1995, all four of which were employers at which Warren had previously unsuccessfully sought work. She obtained employment "through a friend" over a year later, in September 1996, at Mercury Manufacturing. She quit this employment, and the General Counsel amended the compliance specification to specify June 1997 as an excepted period.

Warren's testimony and notes establish that, while receiving unemployment benefits and for several months thereafter, she sought work with a variety of prospective employers. Contrary to a statement in the Respondent's brief, Warren did not unreasonably turn down work "for which she was qualified" in May 1993. The foregoing statement relates to her seeking work at a McDonald's that was seeking a cashier. Although testifying that she did not like handling other people's money, Warren testified that she would have accepted the position if "they would have trained me," but that she was told "[t]hey wasn't hiring." Warren was not offered and did not turn down a job. Counsel did not examine Warren regarding her job search between September 1993 and October 1994. From November 1994 through May 1995, her notes reflect contact with only five employers. Although testifying that she contacted other prospective employers in December 1994 and January and February 1995, she could not name them and she did not write them down because they were "places I'd already been to." All of the five prospective employers that she recorded as having contacted during this period were also places to which Warren had already been and which had also failed to employ her on one or more previous occasions. The foregoing evidence establishes that the breadth of Warren's job search became quite constricted. Warren named no employer at which she sought work after May 1995, and her notes reflect no contact with any prospective employer after May 1995. Notwithstanding the constricted nature of her job search between November 1994 and May 1995, I shall give Warren the benefit of every doubt regarding the reasonableness of her search. Having done so, I find that Warren ceased to engage in a reasonable job search after May 1995 and shall toll her backpay from June 1995 through August 1996. *Lundy Packing Co.*, supra at 176 (Mary Raynor). The compliance specification reflects that in June 1995 Warren would have earned \$282.27 per week at Taylor.

Consistent with the foregoing findings, the Respondent's liability for the final four weeks of the second quarter of 1995 should be reduced by \$1129.08 ( $\$282.27 \times 4$ ) to \$2540.44 ( $\$3669.52 - \$1129.08$ ). The Respondent should incur no liability in the 3d and fourth quarters of 1995 and the first and second quarters of 1996, a reduction in liability of \$14,687.04. In the third quarter of 1996, the Respondent's liability should be reduced by \$3551.55. The foregoing figure is derived from the compliance specification which reflects that, in the third quarter of 1996, Warren's gross backpay was based upon \$282.27 for the first week and \$408.66 for the remaining weeks of the third quarter, a total of \$5186.19.<sup>3</sup> Warren began working in September, thus her gross backpay for the last 4 weeks of the third quarter totals \$1634.64 ( $\$408.66 \times 4$ ). Her interim earnings in the third quarter of 1996 were \$1201.50, leaving a net backpay liability of \$433.14. Thus the Respondent's liability for the third quarter should be reduced by \$3551.55 ( $\$3984.69 - \$433.14$ ). In summary, the Respondent is liable for \$2,540.44 in backpay for the second quarter of 1995, is liable for no backpay in the third and fourth quarters of 1995 and first and second quarters of 1996, and is liable for \$433.14 in backpay for the third quarter of 1996.

The General Counsel amended the compliance specification at the hearing to include an excepted period, June 1997, when Warren was caring for her daughter who had to undergo surgery. Notwithstanding this amendment, the revised compliance specification equally divides her 1997 earnings of \$10,537.60 from Mercury Manufacturing between the first and second quarters of 1997. The gross backpay calculation took the excepted period of June 1997 into account. Gross backpay was computed on the basis of 13 weeks in the first quarter but only 9 weeks in the second quarter. The General Counsel presented no rationale for treating Warren's earnings from Mercury differently for the manner in which gross backpay was computed. Warren's earnings from Mercury Manufacturing should be treated in the same manner as the gross backpay calculation, 13 weeks in the first quarter and 9 weeks in the second quarter of 1997, a total of 22 weeks. Her total earnings of \$10,537.60, when divided by 22, give an average of \$478.98 per week. Thus, in the first quarter of 1997, 13 weeks, Warren earned \$6226.74. In April and May, a total of 9 weeks, she earned \$4310.82. Both of these figures exceed the gross backpay figures for those quarters.

Regarding Warren's quitting of her employment, there is no evidence that her action was related to her job at Mercury Manufacturing. Warren testified that her daughter "was having surgery and I quit to take care of her." There is no evidence that her quitting was for other than this personal reason. When a discriminatee quits interim employment "the burden shifts to the Government to show that the decision to quit was reasonable." *Minette Mills, Inc.*, 316 NLRB 1009, 1010 (1995). Warren's daughter was over 18, an adult.<sup>4</sup> The General Counsel

<sup>3</sup> The compliance specification miscalculates gross backpay for the last 12 weeks of the third quarter at \$4,903.93, rather than \$4,903.92 ( $\$408.66 \times 12$ ).

<sup>4</sup> In November 1992, on her unemployment eligibility document, Warren represented that she had no children under the age of 14. Thus,

adduced no evidence relating to the necessity that Warren quit her job, such as the amount of care required by the particular surgery her daughter underwent or the unavailability of other caregivers. No evidence was adduced relating to any attempt by Warren to obtain a leave of absence or to obtain reemployment at Mercury Manufacturing in July, following the excepted period. In view of the foregoing, I find that the General Counsel has not shown that Warren's quitting of interim employment was reasonable. *Sorenson Lighted Controls*, 297 NLRB 282, 283 (1989). Consistent with the Board's holding in *Knickerbocker Plastic Co.*, 132 NLRB 1209, 1215 (1953), I shall offset the Respondent's liability after the excepted period with the earnings she would have continued to receive from Mercury Manufacturing. Those earnings, at \$6,226.74 per quarter, exceed the earnings that the compliance specification projects she would have received from Taylor for the remainder of her backpay period.

In summary, I find that the Respondent is liable for backpay to Warren as alleged in the revised compliance specification beginning in the third quarter of 1992 through the first quarter of 1995, a total of \$36,613.06. The Respondent's liability for the second quarter of 1995 is \$2,540.44. The Respondent is liable for no backpay in the third and fourth quarters of 1995 and first second quarters of 1996. The Respondent's liability in the third quarter of 1996 is \$433.14 and in the fourth quarter it is \$1,708.09, as alleged in the revised compliance specification. Consistent with my findings, an appropriate allocation of War-

ren's earnings over the first 22 weeks of 1997 results in no backpay liability to the Respondent in the first and second quarters of 1997. Warren's projected earnings from Mercury for the remainder of her backpay period exceed her gross backpay as alleged in the specification. Warren had no medical expenses. I find that Warren is entitled to \$41,294.73 in backpay.

#### ORDER

The Respondent, Taylor Machine Products, Inc., Taylor, Michigan, its officers, agents, successors, and assigns, shall, consistent with the compliance specification as modified by the foregoing findings, satisfy the obligation to make whole the following employees by paying them the following amounts, together with interest thereon accrued to the date of payment computed in the manner described in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and State laws.

Name	Backpay	Medical Expenses	Total
James Howells	\$ 16,410.13	0	\$ 16,410.13
Vernadette Bader	\$ 62,719.66	\$ 1,067.40	\$ 63,787.06
Ruth Cecil	\$ 14,293.58	\$ 1,208.88	\$ 15,502.46
Josephine Mallia	\$ 3,950.71	\$ 6,789.80	\$ 10,740.51
Floria Russell	\$ 26,272.57	\$ 147.00	\$ 26,419.57
Rosemary Smith	\$ 14,119.08	0	\$ 14,119.57
Bonnie Warren	\$ 41,294.73	0	\$ 41,294.73
Total	\$179,060.46	\$ 9,213.08	\$188,273.54